machinery, however, is obviously fictitious. If the fiction is to be employed, there seems to be no good reason why it should not be applied to all contracts for the sole benefit of a third person. The correct and frank method would be to give the sole beneficiary a right of action in his own name. The New York court recently threw off the old shackles. *Seaver* v. *Ransom*, Ct. App. (N. Y.), October 1, 1918. See 32 HARV. L. REV. 82. It is hoped that the English courts will have the courage to do as much.

CORPORATIONS — *Ultra Vires:* WHAT ACTS ARE *Ultra Vires* — ILL-DEFINED OBJECTS OF INCORPORATION. — The memorandum of association of a company contained an objects clause enabling the company to carry on almost every conceivable kind of business which such an organization could adopt. Escape from liability was sought for an act done in the name of the company by its managers on the ground that the act was *ultra vires*. *Held*, that, under such a memorandum, the act was not *ultra vires*. *Cotman* v. *Brougham*, [1918] A. C. 514.

For a discussion of this case, see NOTES, page 279.

EQUITABLE SERVITUDES — COVENANT BY ASSIGNEE OF COPYRIGHT TO PAY ROYALTIES — VENDOR'S LIEN. — Assignee of a copyright covenanted to pay certain royalties and to assign only to successors in business subject to the terms of the deed assigning the copyright. In an action by the covenantee against a subsequent assignee of the copyright with notice of the covenant, *held*, that the subsequent assignee was under no contractual liability to pay royalties; that the original assignment and covenant therein did not make the royalties a charge upon the copyright, and that as the original deed of assignment did not make the royalties a part of the purchase money it did not have the effect of reserving a vendor's lien for unpaid royalties. *Barker* v. *Stickney*, [1918] 2 K. B. 356.

For further discussion of the principles involved, see NOTES, page 278.

EVIDENCE — PRIVILEGED COMMUNICATIONS — ATTORNEY AND CLIENT — COMMUNICATION MADE UNDER MISTAKE TO ATTORNEY OF OPPOSITE PARTY. — Shortly after a highway accident, the solicitor of the prospective defendant called on the injured party and secured from her a signed statement in regard to the collision. Although there was no fraud, the plaintiff signed in the belief that she was making the statement to her own solicitor. Plaintiff applied for discovery. *Held*, that the document was privileged. *Feuerheerd* v. *London Omnibus Co.*, [1918] 2 K. B. 565; 53 L. J. 332.

Communications between attorneys and their clients in relation to legal interests have long been privileged. *Minet* v. *Morgan*, L. R. 8 Ch. 361; *Crosby* v. *Berger*, 4 Edw. (N. Y.) 254 (affirmed in 11 Paige, 377). This means that the communication cannot be used as evidence without the consent of the client. See 4 WIGMORE, EVIDENCE, § 2324. The modern ground for the rule is the need of freedom in consultation with attorneys. *Hatton* v. *Robinson*, 14 Pick. (Mass.) 416; *Wade* v. *Ridley*, 87 Me. 368, 32 Atl. 975. See 4 WIGMORE, EVIDENCE, § 2291. On the same principle the client should not bear the dangerous burden of using more than a due precaution in selecting his attorney. Hence the privilege has been properly extended to cases of *bona fide* belief in the alleged attorney's professional status. *People* v. *Barker*, 60 Mich. 277, 27 N. W. 539; *State* v. *Russell*, 83 Wis. 330, 53 N. W. 441; *Rex* v. *Choney*, 17 Manitoba, 467. See 4 WIGMORE, EVIDENCE, §§ 2302, 2310. However, a communication made to a solicitor known to be acting as counsel for the opposite party has been rightly held not privileged. *Tobakin* v. *Dublin Tramways Co.*, [1905] 2 Ir. Rep. 58. In former cases the communication was procured

by the fraud of the opposing counsel, but the policy of the privilege clearly extends to the principal case. By the denial of discovery on the ground of privilege the plaintiff is assured that the statement cannot be used as evidence against her and is thus given all needed protection.

EVIDENCE — *RES GESTAE* — DECLARATIONS OF AGENT — ADMISSIBILITY IN CORROBORATION. — The defendant's chauffeur struck and killed plaintiff's son. Ten or fifteen minutes later, apart from the scene of the accident, the chauffeur, in reply to a question, said he was driving on a mission for his employer. This declaration was admitted in evidence. *Held*, the declaration should have been excluded. *Frank* v. *Wright*, 205 S. W. 434 (Tenn.).

Declarations of an alleged agent are not competent against the alleged principal to prove the fact of agency, because there is no authority to make such admissions. *Yoshimi & Co.* v. *U. S. Express Co.*, 78 N. J. L. 281, 73 Atl. 45; *Ennis* v. *Wright*, 217 Mass. 40, 104 N. E. 430. But if the agency is otherwise *prima facie* proved, they become admissible in corroboration. *Mullen* v. *Quinlan & Co.*, 195 N. Y. 109, 87 N. E. 1078; *Lemcke* v. *Funk & Co.*, 78 Wash. 460, 139 Pac. 234. As in the principal case, where the defendant owned the automobile, and where the driver was regularly employed as a chauffeur, the fact of agency on this occasion is presumed. *Stewart* v. *Baruch*, 103 App. Div. 577, 93 N. Y. Supp. 161; *Marshall* v. *Taylor*, 168 Mo. App. 240, 153 S. W. 527. See *Ludberg* v. *Barghoorn*, 73 Wash. 476, 481, 131 Pac. 1165, 1167. But even if the agency is otherwise *prima facie* proved, the declarations are admissible only when they constitute a part of the *res gestae*. *Lowden* v. *Wilson*, 233 Ill. 340, 84 N. E. 245; *U. S. Express Co.* v. *Rawson*, 106 Ind. 215, 6 N. E. 337. By the better view statements are considered part of the *res gestae* if they are spontaneous utterances and made so soon after the act in issue as to negative deliberation and design. See 31 HARV. L. REV. 801. On this point the instant case is sound.

INSURANCE — WAIVER OF PRESUMPTION OF DEATH. — A by-law of the defendant insurance company provided that long-continued absence would not be regarded as evidence of death or raise a presumption thereof. Plaintiff relied on the presumption raised by seven years' absence. *Held*, the effort to force new rules of evidence on the court was void. *Gaffney* v. *Royal Neighbors of America*, 174 Pac. 1014 (Idaho).

Formerly courts held invalid agreements that tended to deprive them of their jurisdiction. *Horton* v. *Sayer*, 4 H. & N. 643; *Hall* v. *People's Mutual Fire Insurance Co.*, 6 Gray (Mass.) 185; *Muldrow* v. *Norris*, 2 Cal. 74. Though such is no longer true, present-day courts do hold certain contracts invalid on the grounds, that where there is a relationship between parties, one of whom is not an absolutely free agent under nineteenth-century economic theory, the courts should protect the weaker party by limiting the freedom of contract with the stronger. Thus, an agreement in a lease giving the landlord power to confess judgment in an action of forcible detainer is void. *French* v. *Willer*, 126 Ill. 611, 18 N. E. 811. On similar principles the law limits the defenses of surety companies. *Segari* v. *Mezzei*, 116 La. 1026, 41 So. 245. Legislatures, with due regard to corporate interests, have prescribed such rules for the conduct of the business of insurance as will best protect the interests of the insured. *Commonwealth* v. *Vrooman*, 164 Pa. St. 306, 30 Atl. 217; *N. Y. Life Insurance Co.* v. *Hardison*, 199 Mass. 190, 198, 85 N. E. 410, 413; *Equitable Insurance Co.* v. *Commonwealth*, 113 Ky. 126, 67 S. W. 388; *Orient Insurance Co.* v. *Daggs*, 172 U. S. 557. It is doubtful, however, whether contracts made in accord with the by-law in the principal case give the insurance companies such undue advantages over individuals as to render the by-law void as against public policy.